

CUSTOMER NO. 33647

Patent
Attorney Docket No. ITW7510.008**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of : Deonarine, Victor I.

Serial No. : 09/683,353

Filed : December 18, 2001

For : **DUAL TEMPERATURE INDICATOR STICK
HOLDER**

Group Art No. : 2859

Examiner : Jagan, M.

CERTIFICATION UNDER 37 CFR 1.8(a) and 1.10

I hereby certify that, on the date shown below, this correspondence is being:

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Date: 1-10-05
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Commissioner for Patents
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**INTERVIEW SUMMARY REGARDING NOTIFICATION OF NON-COMPLIANT
APPEAL BRIEF MAILED DECEMBER 17, 2004**

Dear Sir:

Responsive to the Notification of Non-Compliant Appeal Brief mailed December 17 2004, please enter the following Interview Summary resolving the alleged non-compliance.

BEST AVAILABLE COPY

Deonarine, Victor I.

S/N: 09/683,353

INTERVIEW SUMMARY

The undersigned, on January 5, 2005, contacted Supervisory Patent Examiner Mr. Diego Gutierrez regarding the Notification of Non-compliant Appeal Brief received by Appellant for the above-referenced matter and mailed December 17, 2004. The Notification was issued with respect to Appellant's Supplemental Appeal Brief of September 22, 2004 and stated that the Supplemental Appeal Brief would not be entered as it allegedly failed to comply with one or more provisions of Revised 37 C.F.R. §41.37, effective September 13, 2004.

During the telephone interview, the undersigned questioned Mr. Gutierrez whether a Supplemental Appeal Brief, supplementing an Appeal Brief filed prior to the September 13, 2004, the effective date of Revised 37 C.F.R. §41.37, would need to comply with the requirements of the revised rule. Mr. Gutierrez then contacted and invited Mr. Robert Spar, Director of the Office of Patent Legal Administration, to join the discussion.

After discussion, Mr. Spar located and directed the parties' attention to the following Frequently Asked Question (FAQ) posting on the Patent and Trademark Office web site.

Q. Appellant filed an appeal brief prior to September 13, 2004, the effective date of the BPAI final rule. The examiner reopened the prosecution and issued a non-final Office action with a new ground of rejection prior to September 13, 2004. Can the appellant reinstate the appeal by filing a reply brief that addresses the new ground of rejection?

A. Yes, appellant may reinstate the appeal by filing a reply brief that addresses the new ground of rejection. The appeal can also be reinstated by filing a complete new brief in compliance with 37 CFR 41.37. If instead of the Office action being mailed prior to September 13, 2004, the Office action was mailed on or after September 13, 2004, appellant cannot reinstate the appeal by filing a reply brief that addresses the new ground of rejection but instead can only reinstate by filing a complete new brief in compliance with 37 CFR 41.37.
<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/bpaifaq.html> (January 5, 2005)

In the above-referenced matter, Appellant filed an Appeal Brief on February 23, 2004. Responsive thereto, the Examiner reopened prosecution in an Office Action dated June 22, 2004. Appellant responded to the Office Action of June 22, 2004 with a Response requesting reinstatement of the Appeal and a Supplemental Appeal Brief (Reply Brief) filed concurrently on September 22, 2004. Although the Supplemental Appeal Brief was filed after the effective date of Revised 37 C.F.R. §41.37, as evidenced in the FAQ above, Appellant's Supplemental Appeal

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Brief is not required to satisfy the requirements of Revised 37 C.F.R. §41.37 and was filed in proper form, to reinstate the Appeal of February 23, 2004.

Mr. Gutierrez stated to the undersigned that, upon confirmation of the sequence of document filings outlined above, the Notice of Non-compliant Appal Brief of December 17, 2004 for the above-referenced matter would be withdrawn.

Accordingly, Appellant believes that the Supplemental Appeal Brief filed on September 22, 2004 is compliant with the standards of 37 CFR §41.37 effective at the time of Appellant's Appeal. Therefore, Appellant respectfully requests due consideration of the Supplemental Appeal Brief of September 22, 2004. Appellant appreciates SPE Gutierrez's and Director Spar's time in expeditiously resolving this matter. Appellant would appreciate a withdrawal of the Non-Compliant Appeal Brief notice and anticipates receipt of an Examiner's Answer. The Examiner is cordially invited to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,



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Dated: January 10, 2005
Attorney Docket No.: ITW7510.008

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